123-186

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 1072.

THE UNITED STATES, APPELLANTS,

vs.

DENNIS W. MULLAN.

APPEAL FROM THE COURT OF CLAIMS.

FILED SEPTEMBER 27, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 1072.

THE UNITED STATES, APPELLANTS,

vs.

DENNIS W. MULLAN.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.

I.—*Petition—Filed January* 31, 1887.—*J. R.*

DENNIS W. MULLAN
vs.
THE UNITED STATES. } No. 15541.

To the honorable the judges of the Court of Claims:

The petition of Dennis W. Mullan respectfully shows to your honors:

That he is a citizen of the United States and an officer of the Navy thereof, to wit, a

and that his military history is as follows:

Acting midshipman, 21st September, 1860.
Acting ensign, 21st October, 1863.
Master, 10th May, 1866.
Lieutenant, 21st February, 1867.
Lieutenant-commander, 12th March, 1868.

Your petitioner further says, that the lowest grade having graduated pay held by him since last entering the service is, under the act of July 15th, 1870 (R. S., sec. 1556), that of lieutenant-commander, and that the pay of said grade is as follows:

	At sea.	On shore.	On leave.
First four years from date of commission	$2,800	$2,400	$2,000
After four years from date of commission	3,000	2,600	2,200

Your petitioner says that he is, under the provisions of the acts of August 5th, 1882, and March 3d, 1883 (22 Stats., 287 and 473), entitled to have credit given him upon his said grade of lieutenant-commander for all of his services as above stated, prior to the date of his said com-

2 mission as a lieutenant-commander, to wit, seven years, five months, and twenty-one days, and that he is entitled to the difference of pay resulting from such credit, to wit, to the sum of $356\frac{03}{100}$, all of which remains due and unpaid, for which amount he asks judgment.

Your petitioner further says that he is the sole owner of this claim, and has never assigned the same, or any part thereof, to any person; that he has never borne arms against or given aid or comfort to rebellion against the Government of the United States, and that he is entitled to the amount herein claimed, after allowing all just credits and offsets.

DENNIS W. MULLAN,
By JOHN PAUL JONES,
Attorney.

DISTRICT OF COLUMBIA, *ss:*

John Paul Jones, being first duly sworn, says that he is the attorney of Dennis W. Mullan, and that the matters stated in the foregoing petition are true, to the best of his knowledge and belief.

JOS. W. AMAN,
Comm'r Ct. Cls.

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3 II.—*General traverse.*

In the Court of Claims of the United States, December term, A. D. 1886.

DENNIS W. MULLAN
vs.
THE UNITED STATES. } No. 15541.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

ROBERT A. HOWARD,
Assistant Attorney-General.

4 III.—*Findings of fact and conclusion of law.*

Court of Claims.

DENNIS W. MULLAN
v.
THE UNITED STATES. } No. 15541.

FINDINGS OF FACT.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

1. Claimant is an officer in the Navy, and has served continuously since September 21st, 1860, when he was appointed acting midshipman; since then his appointments have been acting ensign, 21 October, 1863; master, 10 May, 1866; lieutenant, 21 February, 1867; lieutenant-commander, 12 March, 1868.

2. He has been paid for all said services in accordance with the laws in force at the time they were performed, but has received nothing on account of the provisions of the act of March 3, 1883, ch. 97 (22 Stat. L., 474), requiring that "all officers of the Navy shall be credited with the actual time they may have served as officers or enlisted men in the regular or volunteer Army or Navy, or both, and shall receive all the benefits
of such actual service in all respects in the same manner as if all
5 of said service had been continuous and in the regular Navy in the lowest grade having graduated pay held by such officer since last entering the Navy.

3. If he be entitled to credit under said act, there is due him therefor the sum of $356.03.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides as a conclusion of law that the claimant is entitled to recover the sum of three hundred fifty-six dollars and three cents.

6 IV.—*Final judgment.*

In the Court of Claims.

DENNIS W. MULLAN
vs.
THE UNITED STATES. } No. 15541.

At a Court of Claims held in the city of Washington, on the 2d day of June, A. D. 1887, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Dennis W. Mullan do have and recover of and from the United States the sum of three hundred and fifty-six dollars $\frac{03}{100}$ ($356\frac{03}{100}$).

7 V.—*Application of defendants for and allowance of appeal.*

In the Court of Claims of the United States, Dec. term, 1886.

DENNIS W. MULLAN
vs.
THE UNITED STATES. } No. 15541.

From the judgment rendered in the above-entitled cause on the 2d day of June, 1887, in favor of claimant, the defendants, by their Attorney-General, on the 22d day of June, 1887, make application for, and give notice of, an appeal to the Supreme Court of the United States.

ROBERT A. HOWARD,
Assistant Attorney-General.

Filed and allowed June 22, 1887.

WILLIAM A. RICHARDSON,
Chief Justice.

8 VI.—*Certificate.*

In the Court of Claims.

DENNIS W. MULLAN
vs.
THE UNITED STATES. } No. 15541.

I, Archibald Hopkins, chief clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the final judgment, and of the application for and allowance of an appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 24th day of August, 1887.

ARCHIBALD HOPKINS,
Chief Clerk Court of Claims.

[SEAL]

(Indorsement on cover:) No. 1072. The United States, appellant, vs. Dennis W. Mullan. Court of Claims. Filed September 27, 1887.

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JAMES H. McKENNEY
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES, APPELLANT,
vs.
DENNIS W. MULLAN
} No. 1072.

STATEMENT, ASSIGNMENT OF ERRORS AND BRIEF FOR APPELLANT.

In the Supreme Court of the United States

OCTOBER TERM, 1887.

THE UNITED STATES, APPELLANT,
vs.
DENNIS W. MULLAN. } No. 1072.

STATEMENT, ASSIGNMENT OF ERRORS AND BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

This is an appeal from a judgment of the Court of Claims, in favor of Dennis W. Mullan, on the 2d day of June A. D. 1887, for $356.03.

Claimant served in the regular Navy as follows: Acting midshipman, September 21, 1860; acting ensign, October 21, 1863; master, May 10, 1866; lieutenant, February 21, 1867; lieutenant-commander, March 12, 1868.

Claimant's service has been continuous and in the regular Navy.

He has been paid for all services in accordance with the laws in force at the time they were performed.

The claim in this suit is founded upon the provisions of the act of March 3, 1883, chapter 97 (22 Stat. L., 473), as follows:

> And all officers of the Navy shall be credited with the actual time they may have served as officers or enlisted men in the regular or volunteer Army or Navy, or both, and shall receive all the benefits of such actual service in all respects and in the same manner as if said service had been continuous and in the lowest grade having graduated pay since last entering the service.

It is contended on the part of the claimant that all officers of the Navy, as well those whose service has been continuous and in the regular Navy as those to whom the law on its face would seem to apply, viz: Officers who had served as officers and enlisted men in the regular or volunteer Army or Navy, or both, whose terms of service were either not continuous or were in different branches of the service, or in the regular or volunteer service, are entitled to the benefit of the provisions of said act.

It is contended on the part of the United States that the act of March 3, 1883, is not general in its application, and is confined to such officers of the Navy as may have served as officers or enlisted men in the volunteer and regular Navy, or in the volunteer or regular Army and Navy, or in both the regular and volunteer Army and Navy, whether the service has been continuous or not, and to those serving in the regular Navy where the term of service has not been continuous.

ASSIGNMENT OF ERRORS.

The court erred—

(1) In deciding, as a conclusion of law, upon the findings of fact as stated, that the claimant is entitled to recover the sum of $356.03.

(2) In deciding that claimant should have judgment for $356.03.

BRIEF OF ARGUMENT.

Applying familiar rules governing the interpretation of laws to the clause of the naval appropriation act of 1863, *supra*, it is submitted that the court below was in error in finding the claimant entitled to recover the sum of $356.03.

The rule by which to arrive at the meaning and intention of a law is to abide by the words which the lawmaker has used, and statutes are to be interpreted so as to give effect to all the words therein, if such interpretation be reasonable, and be neither repugnant to the provisions nor inconsistent with the objects of the statute.

If any meaning is given to the word "last," in the expression "in the lowest grade having graduated pay held by such officer since *last* entering the service," then the position of claimant, that *all* officers, whether their service has been continuous in the regular Navy or not, are beneficiaries under the provisions of the act, is untenable. The word *last* indicates a first as certainly as the word end implies a beginning. It indicates the end of a series of two or more; as, for example, the "last" day of the term im-

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It is contended on the part of the claimant that all officers of the Navy, as well those whose service has been continuous and in the regular Navy as those to whom the law on its face would seem to apply, viz: Officers who had served as officers and enlisted men in the regular or volunteer Army or Navy, or both, whose terms of service were either not continuous or were in different branches of the service or in the regular or volunteer service, are entitled to the benefit of the provisions of said act.

It is contended on the part of the United States that the act of March 3, 1883, is not general in its application, and is confined to such officers of the Navy as may have served as officers or enlisted men in the volunteer and regular Navy, or in the volunteer or regular Army and Navy, or in both the regular and volunteer Army and Navy, whether the service has been continuous or not, and to those serving in the regular Navy where the term of service has not been continuous.

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BRIEF OF ARGUMENT.

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The rule by which to arrive at the meaning and intention of a law is to abide by the words which the lawmaker has used, and statutes are to be interpreted so as to give effect to all the words therein, if such interpretation be reasonable, and be neither repugnant to the provisions nor inconsistent with the objects of the statute.

If any meaning is given to the word "last," in the expression "in the lowest grade having graduated pay held by such officer since *last* entering the service," then the position of claimant, that *all* officers, whether their service has been continuous in the regular Navy or not, are beneficiaries under the provisions of the act, is untenable. The word *last* indicates a first as certainly as the word end implies a beginning. It indicates the end of a series of two or more; as, for example, the "last" day of the term im-

plies a term of more than one day; the "last man" assumes precedent men.

It is not *all* officers that are beneficiaries; it is only "such officer," as described in the act, who has had a "last" entry into the service who is entitled to its benefits. Such officers are described in the act as *all* officers who "have served as officers or enlisted men in the regular Army or Navy, or both," whose services are to be regarded as having been rendered "in the regular Navy in the lowest grade having graduated pay held by *such* officers since *last* entering the service." Service is to be regarded "in all respects in the same manner as if all of said service had been continuous and in the regular Navy."

It is submitted that in gathering the intention of Congress from the words of the act it is manifest that only certain classes of officers are entitled to its benefits. A distinction is made between such officers who have been continuously in the service, and from that fact entitled to the benefit of their entire service under existing laws, and others in the regular Navy who had served in the military service for long terms of years, and yet did not receive the full benefit of such service, either because in the regular Navy it had not been continuous or it had been rendered partly in the volunteer Navy or Army or in the regular Army or in all branches of the service.

Service in the volunteer Army or Navy or in the regular Army is regarded as equally meritorious with that in the regular Navy, and the evident intention of the act was to give the benefit of their entire service to all officers of the regular Navy, no difference where such service was rendered. There are no words in the act to indicate any

intention on the part of Congress to change the status of such officers who had served continuously in the regular Navy.

The intention of Congress as to the scope of the act is not only derived from the words of the act itself, but it is also a matter of public notoriety that the clause in the naval appropriation act, *supra*, was inserted in aid of such officers in the regular Navy who were not receiving the full benefit of their entire military service by reason of their service being non-continuous or irregular. It was in their aid that a clause in the appropriation act of 1882 (22 Stat. L., 287) was inserted, as follows, viz:

> And all officers of the Navy shall be credited with the actual time they may have served as officers or enlisted men in the regular or volunteer Army or Navy, or both, and shall receive the benefits of such actual service in the same manner as if said service had been continuous in the regular Navy.

It can not be justly claimed that the act of 1882 in any manner affected the status of officers whose entire service had been continuous and in the regular Navy. Such officers were already in the enjoyment of all the benefits conferred by the act.

The law of 1882 is identical, so far as it goes, with the law of 1883, but it was questionable under the law of 1882 as to the exact grade in which the beneficiary should receive the benefits of the act. This was defined in the act of 1883 by the re-enactment of the law of 1882, with the addition "in the lowest grade having graduated pay held by such officer since last entering the service." The force and effect of the word "last" is emphasized by the ex-

amination of the act of 1882. All the beneficiaries under such act had more than one entry into the service; the act of 1883 refers to the last entry of those who were beneficiaries under the act of 1882.

The law of 1882 defines the beneficiary, and the act of 1883 determines the grade in which "such officer" shall receive the benefit of his service "as if continuous and in the regular Navy."

The distinction made between officers of continuous service and others is found in a proviso, common to both the acts of 1882 and 1883, as follows, viz:

> *Provided,* That nothing in this clause shall be so construed as to authorize any change in the dates of commission or in the relative rank of such officers.

The intent of this provision was to guarantee such officers whose service had been continuous and in the regular Navy their precedence in rank. In other words, whilst the act was to credit officers with all service as if continuous, it was not to do so at the expense of those whose service had actually been continuous.

It was urged by claimant in the court below that under the decision of this court rendered in *Rockwell's Case* (120 U. S., 60), if the position of defendant is sustained in this case, the act of 1883 would give pay to non-continuous and irregular service; benefits not enjoyed by those officers continuously in the regular service.

In special instances this is possible, and such possible result could have been fairly urged by the defendant in Rockwell's Case, *supra*, as an argument against the construction of the act of 1883 claimed by Rockwell and affirmed by this court.

But the converse of the proposition is not true. If Congress, in an effort to benefit those whose services had been non-continuous or irregular, has given advantages not possessed by those whose service has been continuous, equalization, if deemed just, is for the law-making power, not the courts. If this court, in considering the acts of 1882 and 1883, should determine that the sole intention of Congress was to benefit "such officers" of the regular Navy whose service has been either non-continuous or irregular, then the question of strict or liberal construction of the law does not arise in this case. If it was not the intention of Congress to change the status of the officer whose service has been continuous, it is not within the legitimate power of the court to change it. Such change requires legislative action, not judicial, construction.

The word "service," in the phrase, "lowest grade having graduated pay held by such officer since last entering the *service*," does not, as was urged by claimant in the court below, refer to regular service in the Navy. It refers to the service rendered by the beneficiaries under the law, viz, service "in the regular or volunteer Army and Navy, or both." It is not claimed on the part of the defendant that, to entitle an officer of the regular Navy to the benefits of the law of 1883 there should have been more than one entry into the regular Navy, but it is contended that there should have been more than one entry into the military service—Army or Navy.

Nor is it contended on the part of the defendant that continuous military service, if rendered in different branches of the service, would deprive a claimant of the

benefits of the law. The object of the laws of 1882 and 1883 were in aid of those who did not under existing laws have credit for their actual length of service. *Jordan's Case* (19 C. C., 621), *Rockwell's Case* (21 C. C., 332), *Hendee's Case*, now on appeal, cited by claimant in the court below, are all cases in which the claimants had served in different branches of the service.

Of the same character are most of the cases cited as having been allowed by the accounting officers. In all of the cases cited the question is presented as to whether the claimants had credit for their entire term of service under laws existing at the time of the enactment of the above-cited clause in the naval appropriation act of 1883.

It is not contended that in the construction of a doubtful law the contemporaneous construction of persons appointed to execute it is not entitled to great respect, but the authority of such construction is persuasive, not binding, on the court.

In the present case, however, such contemporaneous construction asserted by claimant is denied. Since the enactment of the cited clauses in the naval appropriation act of 1882 and 1883 the question of construction has been a number of times before this court. The benefit of the law has been claimed in many classes of cases in which the application of the law has appeared doubtful to the accounting officers of the Treasury. Except so far as this court has interpreted it there has not been what could be termed a settled construction of the law. That the law was passed for the benefit of every and all officers of the Navy, as claimed in the present suit, has never been ad-

mitted by the accounting officers, and is now earnestly denied; and the construction claimed by defendant is now submitted for the consideration of this court.

A. H. GARLAND,
Attorney-General.
ROBERT A. HOWARD,
Assistant Attorney-General.
F. P. DEWEES,
Assistant Attorney.

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Supreme Court of the United States.

October Term 1887.—No. 1072.

THE UNITED STATES

vs.

DENNIS W. MULLAN.

BRIEF IN BEHALF OF THE APPELLEE.

JOHN PAUL JONES,
ROB'T B. LINES,
Counsel for Appellee.

Press of Thomas McGill & Co., Washington, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM 1887.

THE UNITED STATES
vs.
DENNIS W. MULLAN. } No. 1,072

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLEE.

This is one of several cases now here on appeal arising under the following clause of the Naval Appropriation Act of March 3, 1883 (22 Stats., 473):

"SEC. 1. * * And *all* officers of the Navy shall be credited with the actual time they may have served as *officers* or enlisted men in the *Regular* or Volunteer Army, or Navy, or both, and shall receive *all* the benefits of such actual service in all respects in the same manner as if *all* said service had been continuous and in the regular Navy in the lowest grade having graduated pay held by such officer since last entering the service: *Provided*, That nothing in this clause shall be so construed as to authorize any change in the dates of commission or in the relative rank of such officers: *Provided, further*, That nothing herein contained shall be so construed as to give any additional pay to any such officer during the time of his service in the *volunteer* Army or Navy."

The appellee served continuously in the regular Navy from September 21, 1860, to July 1, 1870, in grades which

had no graduated pay. On that date, appellee being then Lieutenant-Commander, graduated pay was given to that and other grades of the Navy. (16 Stats., 330.) He claimed under the section of the act of 1883 above quoted to have credit in his grade of Lieutenant-Commander for his prior uncredited service in other grades, and the Court below, after argument, gave judgment for $356.03.

No opinion was filed, the Court thinking, it may be supposed, that the facts in the case did not distinguish it from that of Rockwell (21 Ct. Cls., 332). In that case the Court of Claims said (p. 338):

"The provisions of the act of 1883 seem to have been enacted for the purpose of giving to *all* officers in the regular Navy since last entering the service in the grade first held by them then having graduated pay, credit for *all* their previous service in the Army or Navy, or both, *regular* or volunteer, *and whether continuous or not*, in order that while they remained in that grade they should have the additional pay then allowed for length of service."

In accordance with this view, although it was not the main question in his case, Rockwell was given credit for his continuous regular service from 1868 to 1870, as well as for his interrupted volunteer service from 1862 to 1868. So in the previous case of Bradbury, who, in 1871, was promoted, without break, from regular mate (a grade having no graduated pay) to regular master, the Court gave judgment, under the act of 1883, for the increased pay in the grade of master, resulting from crediting upon it the time of his service as mate. (20 Ct. Cls., 187.)

The records of the Court of Claims show that on the 15th of February last, after the judgment in the Rockwell case was affirmed by this Court, judgments were rendered in sixteen cases similar to that now at bar. These were provided for in the deficiency bill, which failed to pass. Some months after (at the request, as it is understood, of the Treasury officials), appeals in those cases were moved

for. It was then that this case was argued, and upon it the Court affirmed its previous judgments, without opinion; and we are now called upon to meet here the ingenious argument which failed to convince the Court below.

The question raised by the appeal in this case is, whether the clause above quoted was intended to apply to "all officers of the Navy," or only to certain classes. Stated differently, whether it was intended to give credit for *all* service "as *officers* or enlisted men in the *Regular* or Volunteer Army, or Navy," or only for certain classes of such service.

Appellants concede that Rockwell was entitled to count on the grade he held in 1870 all of his prior service, volunteer and regular, but say that he was so entitled—1st, because such prior service was partly volunteer, and 2d, because it was partly non-continuous. So, if such prior service had been partly in the Army, they say, it could all be counted. But appellee's uncredited service cannot, they say, be counted on the grade he held in 1870, because it was all in the Navy, regular and continuous.

Or, if Rockwell had been a regular officer from the beginning, but had resigned or been dismissed by court-martial and restored in 1868 by Act of Congress, * all his service could have been credited to the grade he held in 1870, while appellee, whose inclination prompted him to remain, and whose conduct justified his retention, can have no such credit.

So that, according to appellants, Congress intended to rate volunteer, army and non-continuous service, not on a par with, but at a premium over, regular and continuous service in the Navy.

To fasten on Congress such an unjust and odious inten-

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* The case of an officer so dismissed and restored, and who received from the accounting officers the benefit of the Act of 1883, was cited in our brief in this case in the lower Court.

tion appellants should, we submit, adduce the strongest of arguments.

If it could be shown that the cases to which they hold the law applicable were the majority of "all officers," they might derive some support from the maxim "*ad ea quae frequentius accidunt jura adaptantur*," but that maxim is not invoked.

Or if the section in which the clause quoted from the Act of 1883 is found, treated only of certain classes of officers, a limitation on the words "all officers," as used in the clause, might be implied from the context. But, on the contrary, we find the clause at the end of a section providing for the pay of every officer in the Navy, from the admiral down, and specifying the grades.

If it had been intended to limit the benefits of the clause in the manner suggested by appellants, nothing would have been easier than to specify the classes to be benefited by describing their services, and saying: "All officers of the Navy who had served as officers or enlisted men in the Volunteer Navy, or in the Army, or non-continuously in the Regular Navy," &c. But the statute says, simply, "all officers of the Navy."

To escape the effect of these general words, counsel calls attention, in reverse order, to the language in the clause itself directing how service shall be credited and its benefits computed.

This language is, "in the same manner as if all said service *had been continuous, and in the Regular Navy*, in the lowest grade having graduated pay held by such officer since *last* entering the service."

There could be no reason, counsel argues, for directing credit for service which *was* continuous and in the Regular Navy, to be given as though it *had been* continuous and in the Regular Navy. Perhaps not; but that is not the only direction. The service is to be credited as though it had been rendered in a certain grade; and if it was not ren-

dered in that grade, then it comes within the scope of the clause, although it was regular and continuous.

But counsel says, also, that the words, "since *last* entering the service," used merely to describe the grade in which uncredited service shall be counted, exclude all officers who have not entered the service more than once. And yet in his statement of the case counsel for appellant says: "Claimant's *first* entry into the service was his *last* entry into the service."

If this be accepted, as we think it should be, as a proper use of the term "last," then the whole argument on this point falls to the ground. Nothing is more common in the ordinary use of language than to speak of "first and last," as counsel does, to describe an event which has happened only once.

Counsel for appellants says, in answer to a point made in the Court below, that the words "last entering the service" do not mean "last entering the Regular Navy." We think they do. It is obvious that as the act treats of the officers of the Navy, as they existed in 1883, and as the Volunteer Navy had then long been abolished, the last entry of any such officer, if he had more than one, must necessarily have been an entry into the Regular Navy. Assuming the terms "service" and "Regular Navy" to be synonymous, we argued below that appellant's construction of "last" would cut off not only appellee, but Rockwell, and the majority of officers whose cases had been already settled, since very few of them had entered the Regular Navy more than once.

But, even if appellant's view is correct, and the word "service" covers the Volunteer Navy and the Army as well as the Regular Navy, there would still be a large proportion of beneficiaries, in addition to those represented by appellee, cut off by the suggested construction of the word "last." In order not to misrepresent appellants, we quote from their brief:

"It is not claimed on the part of the defendant that, to entitle an officer of the Regular Navy to the benefits of the law of 1883, there should have been more than one entry into the Regular Navy; but it is contended that there should have been more than one entry into the military service—Army or Navy. Nor is it contended on the part of the defendant that continuous military service, *if rendered in different branches of the service*, would deprive a claimant of the benefits of the law. * * * Jordan's case (19 C. Cls., 621); Rockwell's case (21 C. Cls., 332); Hendee's case, appealed to this Court, cited by claimant in the Court below, are all cases in which the claimants had served *in different branches of the service*"—*i. e.*, in the Army or in the Volunteer Navy.

So that, if all their service had been in one branch, viz, the Regular Navy, it could not, according to appellants, have been counted if it had been continuous.

That such has not been the uniform Executive construction appears from the paragraph of appellants' brief, following those above quoted, though it is not in the record. But it is obvious that there must be many cases of a different class from that at bar where officers are promoted in the Regular Navy to grades having graduated pay while serving in grades which have none. An enlisted man in the Regular Navy is made a mate and afterwards a boatswain or gunner. An apothecary is made assistant surgeon, or a paymaster's clerk is made assistant paymaster, all without breaking the continuity of their service. And yet, according to appellants, such officers can get no advantage of longevity pay, by reason of prior service, over officers appointed from civil life. Certainly, this construction does not meet the view expressed by counsel in the paragraph of his brief omitted from the above quotation, viz:

"The object of the laws of 1882 and 1883 was in aid of those who did not, under existing laws, have credit for their actual length of service."

That is precisely what we claim, and all we claim, in this case. Neither appellee nor Rockwell had, under existing laws, any credit for service rendered prior to 1870, and both of them are entitled to it under the Act of 1883.

To conclude the argument on the language of the Act of 1883, we say that it was intended to *include* officers whose service had been non-continuous, not to *exclude* those whose service had been continuous.

If, on examining any officer's record, it is found that there is any service, Regular or Volunteer, Navy or Army, for which he has received no credit in the matter of longevity pay, the Act of 1883 gives him such credit on the first grade in which it would be available, *i. e.*, the lowest having graduated pay. If it be found that he has entered the service twice, he is to have credit on the lowest grade having graduated pay held by him since his second entry.

This construction would harmonize the word "last" with the general words "all officers," &c., and be equitable to all, while appellant's construction would involve a gross discrimination in favor of irregular Volunteer and Army service, and against regular service.

But the most ingenious part of the argument of counsel is that derived from a comparison of the clause of 1883 with the clause in the prior appropriation act of 1882. (22 Stats., 287). When analyzed, however, it will be found that the argument is based purely on an assumption of the intention of the Act of 1882. Counsel says that that act defined the beneficiaries and the benefits, and the Act of 1883 merely provided a grade on which their benefits should be computed. Conceding this, it by no means follows that the benefits of the Act of 1882 were intended to be limited to those who had served in the Volunteer Navy, or in the Army, or non-continuously in the Regular Navy. The same general words, "all officers," "regular or volunteer," "all said service," etc., which are found in the Act of 1883, occur in that of 1882. As we have said

before, if these words were not to be used in their ordinary sense, nothing was easier than for Congress to specify the classes of officers intended to be benefited and the classes of service to be credited. The limitation insisted on by counsel is implied from the words directing the service to be credited "in the same manner as if all said service had been continuous and in the Regular Navy." It is clear that this direction did not affect the status of appellee. But neither would it have changed the status of Rockwell, or Bradbury, or Hawkins or Jordan (19 C. Cls., 611, 621), or any of those whose cases were admittedly covered by the additional language found in the Act of 1883. All that can be said of it, then, is that it was defective, and there is no more reason for saying that the defect applied merely to cases like those last cited than that it applied to cases like the one at bar. It is not conceivable that Congress, being advised of the classes of cases which would not be covered by the Act of 1882, should repeat in the Act of 1883 the words "all officers," "regular or volunteer," etc., clearly applicable to a class of cases which it never intended to cover.

If an explanation of the motive of Congress in passing the Act of 1883 is necessary, it must be sought elsewhere than in the admittedly defective Act of 1882. We think such an explanation may be found in a long-existing discrepancy, not alone between the regular and volunteer officers of the Navy, but between the officers of the Navy and those of the Army and Marine Corps.

On the 15th of July, 1870, two appropriation acts were passed, one fixing the pay of officers of the Army, and the other that of officers of the Navy. (16 Stats., 320; *id.*, 330.) Both recognized the principle of longevity pay for veteran service. In the Army Act, however, such service was credited in each grade, whether it had been rendered in that grade or some other.

Under this method of computation each Army officer

immediately got the benefit in the grade which he held when the act was passed, of all his prior service, and thus obtained a legitimate advantage in pay over his fellow-officer appointed from civil life. But in the Navy Act, the pay being graduated anew from the date of each commission, no prior service was allowed to count, and no such advantage was obtained.

Moreover (under an Act of 1867, 14 Stats., 434), it was held that an Army officer might count volunteer service. Credit for enlisted service was given the Army officer by the Appropriation Act of 1878. (20 Stats., 150.) And the Army Appropriation Act of February 24, 1881 (21 Stats., 346), gave him broadly credit for all his service "in the Army or Navy," including (as was held in U. S. *v.* Morton, 112 U. S. Rep., 1) service at the Military Academy. So that, whenever an Army officer enters a grade having graduated pay, he at once takes credit therein for the time of all prior service, of whatever character.

Viewed in the light of this legislation for the Army, which applied equally to the Marine Corps (R. S., sec. 1612), and all of which, from 1870 down, originated on appropriation bills, it is certainly fair to suppose that the appropriation committee intended, in the Naval bill of 1882, to completely remove the discrimination which had so long existed against Naval officers, by allowing them also to count for longevity pay all service not previously credited.

It is also, we submit, a fair inference, that, having legislated so recently for the Army, that committee overlooked the difference between the Army and Navy methods of computing longevity pay, and used language which would have been perfectly operative in the former service but was not operative in the latter. On this theory the use of the words "all officers," etc., is explicable, but it is not explicable on the theory of the appellants, that the committee had in mind only Volunteer, Army and non-continuous service.

But even if, as insisted by appellants, the committee in 1882 had in view only these latter classes, there is nothing to show that its views were not enlarged when it came to consider the Act of 1883. It is certain that its attention had then been called to the difference between the Army and Navy pay schedules; and it may be presumed that it examined the acts of 1870, in which they originated, perceived all the disadvantages under which the Navy labored as above set forth, and adopted what it supposed to be fit language to remove them, by providing a grade on which to count all uncredited veteran service, volunteer or regular, in the Army or Navy, continuous or non-continuous, as officers or enlisted men.

This argument may appear to have been stretched to a length not justified by the importance of the question or the amount involved. If so, our excuse must be a not unreasonable desire to secure a broad construction of the Act which shall govern, not only the Court below, but also the Executive officers charged with its execution, and prevent constant appeals in future.

Respectfully submitted.

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